



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 168

[Docket No. USCG-2012-0975]

RIN 1625-AB96

Double Hull Tanker Escorts on the Waters of Prince William Sound, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

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SUMMARY: The Coast Guard is amending the escort requirements for certain tankers operating on the waters of Prince William Sound, Alaska (PWS). This interim rule is necessary to implement section 711 of the Coast Guard Authorization Act of 2010 (Act), which mandates two tug escorts for double hull tankers over 5,000 gross tons transporting oil in bulk in PWS. The Act directed the Coast Guard to promulgate interim regulations as soon and practicable to ensure that tug escort requirements apply to certain double hull tankers.

DATES: This interim rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must either be submitted to

our online docket via <http://www.regulations.gov> on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0975 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,  
Room W12-140, 1200 New Jersey Avenue SE., Washington, DC  
20590-0001.

(4) Hand delivery: Same as mail address above,  
between 9 a.m. and 5 p.m., Monday through Friday, except  
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these  
four methods. See the "Public Participation and Request  
for Comments" portion of the SUPPLEMENTARY INFORMATION  
section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on  
this rule, e-mail or call Mr. Kevin Tone, Office of  
Operating and Environmental Standards, Coast Guard; e-mail

[Kevin.P.Tone@uscg.mil](mailto:Kevin.P.Tone@uscg.mil), telephone 202-372-1441. If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0975), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "USCG-2012-0975" in the "Search" box. Click the "Search" button. Locate the title of this rule in the search results. Click on the "Comment Now!" button to the right of the title. Complete the required fields, include your comment, and click on the "Submit" button. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period

and may change this rule based on your comments.

#### B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert "USCG-2012-0975" in the "Search" box. Click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### D. Public meeting

We do not now plan to hold a public meeting. You may

submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## II. Abbreviations

APA	Administrative Procedure Act (5 U.S.C. 553)
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
GT	Gross tons
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
NTTAA	National Technology Transfer and Advancement Act
OPA 90	Oil Pollution Act of 1990 (Pub. L. 101-380, 104 Stat. 484)
PWS	Prince William Sound, Alaska
RFA	Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612)
§	Section symbol
SBA	Small Business Administration
U.S.C.	United States Code

## III. Regulatory History

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to section 711 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281, 124 Stat. 2905) (Act) that mandates the requirements in this rule. The Act requires that interim regulations be issued without notice and hearing pursuant to section 553 of title 5 of the United States Code.

Because of this congressional directive, publication of an NPRM is unnecessary.

Although this interim rule will become effective 30 days after publication in the Federal Register, we are issuing this rule with a request for comments to solicit and consider information from those entities that may be impacted by this rule. See Section I.A. of this rule for information regarding the submission of comments.

#### IV. Basis and Purpose

The basis of this rulemaking is section 711 of the Act. In section 711, Congress directed the Coast Guard to revise its regulations to require all double hull tankers over 5,000 gross tons (GT) transporting oil in bulk in Prince William Sound, Alaska (PWS) to be escorted by at least two towing vessels or other vessels considered to be appropriate by the Secretary. This requirement is intended to increase the protection of the environment and the safety of vessels transiting PWS by reducing the risk of groundings, allisions or collisions when escort vessels are readily available to assist a tanker in distress.

#### Background

Section 4116(c) of the Oil Pollution Act of 1990 (Pub. L. 101-380, 104 Stat. 484) (OPA 90) required the two vessel escort system for single hull tank vessels over 5,000 GT

transporting oil in bulk in PWS. These regulations are found in 33 CFR part 168. OPA 90 also mandated the phase-out of single hull tank vessels by January 1, 2015, and required that newly built tank vessels be double hulled.

With the phase-out of the single hull tank vessels, there would be no requirement for any tank vessel to maintain an escort system. Section 711 of the Act extends the escort system requirement to double hull tank vessels over 5,000 GT transporting oil in bulk in PWS.

A double hull provides a tank vessel with added protection from an oil spill as a result of a hull breach due to a grounding, allision or collision. While double hull tank vessels provide greater protection from oil spills over single hull tank vessels, with section 711 of the Act Congress further intended to increase the protection of the environment and the safety of vessels transiting PWS.

#### V. Discussion of the Interim Rule

The purpose of the existing regulations in 33 CFR part 168, Escort Requirements for Certain Tankers, is to reduce the risk of oil spills from laden, single hull tankers over 5,000 GT by requiring that these tankers be escorted by at least two suitable escort vessels in applicable waters. The applicable waters are defined in § 168.40.



The requirement of two escort vessels has contributed to a reduction in spill incidents because the escort vessels are immediately available to influence the tanker's speed and course in the event of a steering or propulsion equipment failure, thereby reducing the possibility of a grounding, allision or collision. This interim rule amends part 168 so that it also applies to double hull tankers over 5,000 GT transporting oil in PWS. This rule codifies established industry practice for escorting double hull tank vessels on transits in and out of PWS.

This interim rule revises three sections of 33 CFR part 168. We revised § 168.01 to make it clear that part 168 now addresses escort vessels for double hull tankers as well as single hull tankers. We added a definition of the term double hull tanker to § 168.05. Finally, this rule amends § 168.20 to extend the applicability of part 168 to include double hull tankers over 5,000 GT transporting oil in bulk in PWS. All other sections of part 168, including the escort vessel performance and operational requirements in § 168.50, which includes prescribed transit speeds and other maneuvering parameters such as directional variances for escort vessels, remain unchanged. With these changes, the Coast Guard is implementing the escort vessel requirements of section 711 of the Act.

We considered two alternatives (including the preferred alternative) in the development of this rule. The key factors that we evaluated in considering each alternative included: (1) the degree to which the alternative comported with the congressional mandate in section 711 of the Act; (2) what benefits, if any, would be derived, such as enhancement of personal and environmental safety and security; and (3) cost effectiveness. The alternatives considered are as follows:

Alternative 1: Revise 33 CFR 168 to include double hull tankers over 5,000 GT transporting oil in bulk in PWS, but do not revise the existing performance-based escort requirements (preferred alternative). At present, two tug escorts of both single and double hull tankers is the industry practice being employed on the waters of PWS. Implementation of this interim rule will codify current industry practice.

Alternative 2: Take no action. This option was not selected as it would not implement section 711 of the Act, which specifically requires the Coast Guard to issue regulations.

We also considered adding a third escort vessel for double hull tank vessels that transit PWS. However, this would impose additional disproportionate costs on double

hull tank vessel owners and operators (as single hull tank vessels would remain subject to the two escort requirement) without any incremental gain in benefits from the current industry practice of a dual vessel escort system (i.e., no casualties or other data indicating that two escort vessels were insufficient).

Ultimately, we chose Alternative 1 as the preferred alternative to make revisions to 33 CFR part 168. Alternative 1 satisfactorily implements section 711 of the Act by adding two escort vessels for each double hull tanker transporting oil in bulk in PWS while also retaining the performance requirements in § 168.50 that are readily applicable to tanker escorts regardless of whether the tanker is single or double hulled.

## VI. Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the interim rule has not been reviewed by the Office of Management and Budget. The Regulatory Assessment follows:

This interim rule will require a two vessel escort system for double hull tankers over 5,000 GT transporting oil in bulk in PWS, as mandated by section 711(b) of the Act. Currently, single hull tankers are required to have two escort vessels per 33 CFR part 168. This interim rule will amend this part to extend this requirement to double hull tankers in PWS.

Table 1 below summarizes the impacts of the interim rule.

Table 1. Summary of Interim Rule Impacts

Category	Summary
Population	<ul style="list-style-type: none"> <li>- 15 double-hull tank vessels that transit PWS annually.</li> <li>- One company that owns the 12 escort vessels in PWS.</li> </ul>
Costs	None - codification of existing practice
Unquantified Benefits	<ul style="list-style-type: none"> <li>- Elimination of confusion within industry by harmonizing CFR with U.S.C.</li> <li>- Codification of current industry practice ensures benefits of dual vessel escort system in PWS remain, including reduction of the risk of an oil spill by influencing a vessel's speed and course in the event of equipment failure or loss of steering and/or propulsion.</li> </ul>

#### Costs

OPA 90 requires the two vessel escort system for single hull vessels over 5,000 GT transporting oil in bulk in PWS. However, single hull tankers are currently being phased out in favor of double hull tankers. Based on vessel traffic data from the Coast Guard Marine Safety Unit in Valdez, Alaska, no single hull vessels have called on PWS since 2009.

Based on communications with the Marine Safety Unit in Valdez, AK, as well as the Vessel Traffic Service and Captain of the Port for that region, we determined that it has been an industry practice since 2008 that double hull

tankers be escorted by a two vessel escort system when in transit through PWS. Currently, 15 double hull tank vessels transit PWS and over the last 5 years, double hull tank vessels made an average of 250 port calls annually on PWS. One company operates the 12 tugs that participate in the two tug escort system in PWS.

Since this interim rule will codify an industry practice that has been in place for over 5 years, we do not anticipate that this interim rule will impose additional costs on the public or industry, or alter industry behavior in any way. Finally, we do not anticipate that this interim rule will impose new costs on the Coast Guard or require the Coast Guard to expend additional resources.

#### Analysis of Alternatives

We chose Alternative 1, which codifies current industry practice and implements section 711 of the Act as described above and in Section VI.B. below. We chose to reject Alternative 2, the "no action" alternative, because it would not implement section 711 of the Act.

#### Benefits

This interim rule codifies the current industry practice of a dual vessel escort system in PWS. The primary benefit of the interim rule is eliminating confusion within industry by harmonizing the CFR with

U.S.C. The practice of a dual vessel escort system also results in safety and environmental benefits, although these benefits exist under current practice. However, codification of the industry practice ensures the continuing benefits of the dual vessel escort system, which is to reduce the risk of an oil spill by ensuring the safe transit of tank vessels over 5,000 GT transporting oil in bulk in PWS. For PWS, we believe a two vessel escort system is beneficial in the event of equipment failure such as the loss of steering or propulsion. Additionally, if a tanker becomes disabled, the two escort vessels can influence the speed and course of the tanker, thereby reducing the likelihood of an allision, collision, or grounding. We reviewed allision, collision, and grounding casualty data for tank vessels in PWS over a 15-year period from 1998 through 2012 and found no casualty cases that involved a double hull tank vessel. All of these vessels were escorted by a two vessel escort.

#### B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require an

agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in section III. "Regulatory History" and therefore is not required to publish a regulatory flexibility analysis.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Kevin Tone, CG-OES, Coast Guard; telephone 202-372-1441, email [Kevin.P.Tone@uscg.mil](mailto:Kevin.P.Tone@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain



about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption

requirements described in Executive Order 13132. Our analysis is explained below.

As noted earlier in the preamble, this rule implements section 711 of Pub. L. 118-281 for PWS. With respect to federalism, section 711(c) of Pub. L. 118-281 provides that nothing in the Act or any other provision of Federal law related to the regulation of maritime transportation of oil should be construed or interpreted as preempting the authority of the State, or a political subdivision thereof, from requiring escort vessels to accompany tankers transporting oil in bulk in PWS. Because this statute preserves the authority of the State of Alaska to promulgate additional requirements beyond that required by this rule in PWS, and because this rule merely implements the Congressional mandate, this rule does not have an effect on the relationship between the national government and the State of Alaska, and therefore is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Although this rule does not have an effect on the relationship between the national government and the State of Alaska, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications

and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

Therefore, the Coast Guard invites State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this interim rule. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document: (1) the extent of the Coast Guard's consultation with State and local officials who submit comments to this rule; (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon; and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the States.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000

(adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of

materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy," (67 FR 48244, July 23, 2002). This rule involves Congressionally-mandated regulations designed to protect the environment, specifically, regulations implementing the requirements of the Act. An environmental analysis checklist and a categorical exclusion

determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 168

Cargo vessels, Navigation (water), Oil pollution, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 168 as follows:

PART 168—ESCORT REQUIREMENTS FOR CERTAIN TANKERS

1. The authority citation for part 168 is revised to read as follows:

Authority: Section 4116(c), Pub. L. 101-380, 104 Stat. 520 (46 U.S.C. 3703 note); section 711 Pub. L. 111-281, 124 Stat 2905; Department of Homeland Security Delegation No. 170.1, para. 2(82).

§ 168.01 [Amended]

2. Amend § 168.01(a) as follows:

a. After the words "(Pub. L. 101-380)", add the words ", as amended by section 711 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281)";

b. After the words "single hull", add the words "and double hull"; and

c. After the words "suitable escort vessels", add the words "in applicable waters, as defined in § 168.40".

3. In § 168.05, add, in alphabetical order, the

definition of the term "Double hull tanker" to read as follows:

§ 168.05 Definitions.

\* \* \* \* \*

Double hull tanker means any self-propelled tank vessel that is constructed with both double bottom and double sides in accordance with the provisions of 33 CFR 157.10d.

\* \* \* \* \*



4. Revise § 168.20 to read as follows:

§ 168.20 Applicable vessels.

The requirements of this part apply to the following laden tankers of 5,000 gross tons or more:

(a) All single hull tankers on the waters listed in § 168.40(a) and (b); and

(b) All double hull tankers on the waters listed in § 168.40(a).

Dated: August 9, 2013.

J. G. LANTZ  
Director of Commercial Regulations and Standards  
U. S. Coast Guard

[FR Doc. 2013-20075 Filed 08/16/2013 at 8:45 am;

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